

A G. Contract No KRO2-2050TRN  
ADOT ECS File No. JPA 02-074  
Project: U070-A-504  
TRACS: H5936 01C  
Section: Rest Area on US 70, MP 294

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
SAN CARLOS APACHE INDIAN NATION  
THROUGH BYLAS DISTRICT

THIS AGREEMENT IS ENTERED INTO 12th March, 2003, pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION ( the "State") and SAN CARLOS APACHE INDIAN NATION, BYLAS DISTRICT, acting by and through its San Carlos Apache Tribal Council, ( the "Tribe" ).

### I. RECITALS

1. State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Tribe is empowered by the Tribal Council Resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Tribe.

3. It is to the mutual advantage of the State and the Tribe to construct a new rest area facility, which will include but is not limited to: a restroom building, picnic ramadas, parking areas, drinking fountains, landscaping and paths, within the Tribe's rights-of-way on US 70 (MP 296 08), herein referred to as the "Project".

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 25882  
Filed with the Secretary of State  
Date Filed: 03/12/03

Janice K. Brewer  
Secretary of State

By: Darryl J. Hoeneveld

## **II. SCOPE OF WORK**

### **1. The State will.**

- a. Complete environmental documentation and prepare design plans for the Project
- b. Hereby agree to be authorized agent for the Tribe. On behalf of the Tribe and with written concurrence of the design plans, shall call for bids, construct the project using Federal and State funds not to exceed \$250,000. Shall award one or more contracts to accomplish the Project, administer same and make all payments to the contractor
- c. Confer with, and obtain written consent from the Tribe on any Project related contract modifications. Be responsible for any contractor claims for extra compensation attributable to the State.
- d. Provide to the Tribe design plans, specifications and such other documents and services required for construction bidding and construction of the Project. Incorporate or resolve Tribal review comments.
- e. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.

### **2. The Tribe will:**

- a. Grant the State or its contractor right of entry access outside the State's rights-of-way, as required for the construction of the Project and during the nine month "Contractor's Establishment Period"
- b. After the State approves and accepts the Project, will maintain the rest area facility within its rights-of-way with due regard for the safety of those who use it, and in an attractive and sanitary manner, as it was designed and approved by the State. The Tribe will not make any changes, additions or deletions without written approval by the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual "
- c. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the Tribe
- d. Will provide the land required for this project.

## **III. MISCELLANEOUS PROVISIONS**

1. This agreement shall become effective upon filing with the Secretary of State.
2. This agreement shall remain in force and effect until completion of said Project and payments; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled at any time prior to the advertisement of the Project contract, with thirty (30) days written notice to the other party
3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract

5. Applicable laws and regulations of the State, the Tribe and the Federal government shall govern the rights of the parties with respect to the performance of this agreement. In the event of any controversy which may arise out of this agreement, the parties hereto agree to select a process acceptable to the State, the Tribe and the Bureau of Indian Affairs to resolve such disputes. Such process may include a provision for arbitration.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows.

Arizona Department of Transportation  
Joint Project Administration  
205 South 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, AZ 85007

San Carlos Apache Tribe  
P.O. Box 0  
San Carlos, Arizona 85550

7. Attached hereto is the written determination of each party's legal council that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

**SAN CARLOS APACHE TRIBE**

By Kathleen Wesley Kitcheyan  
KATHLEEN WESLEY KITCHEYAN  
Tribal Chair Woman

**STATE OF ARIZONA**

Department of Transportation

By Susan Tellez  
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By Bentria Hudson  
~~EVELYN HUDSON~~ **Ophelia James**  
Tribal Secretary

**SAN CARLOS APACHE TRIBE  
SAN CARLOS APACHE INDIAN RESERVATION  
SAN CARLOS, ARIZONA**

**RESOLUTION**

**NO: MR-03-24**

**WHEREAS, the San Carlos Apache Tribe is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 stat., 984); and,**

**WHEREAS, the San Carlos Apache Tribal Council is responsible for the general health and safety of Tribal Members; and**

**WHEREAS, it is to the mutual advantage of the State and the Tribe to construct and maintain a new rest area facility on U.S. Highway 70 (MP 296.08); and**

**NOW THEREFORE BE IT RESOLVED; the San Carlos Apache Tribal Council approves and authorizes the use of approximately 3.5 acres of land located at MP 296.08 along U.S. Highway 70 for a rest area facility.**

**BE IT FURTHER RESOLVED; the San Carlos Apache Tribe agrees to maintain the rest area facility in an attractive and sanitary manner; and,**

**BE IT FINALLY RESOLVED, that the Tribal Chairwoman, Vice-Chairman or their designee are hereby authorized to sign all necessary documents to effect this Resolution including any modification thereto.**

**CERTIFICATION**

**I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby certify that the Tribal Council is presently composed of 11 members, of whom 11 constituting a quorum were present at a Regular Council meeting hereto held on the 4<sup>th</sup> day of March 2003, and that the foregoing Resolution No. MR-03-24 was duly adopted by a vote of 9 for; 0 opposed 0 abstained; of the Tribal Council pursuant to Article V, Section 1 (a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe effective February 24, 1954.**

  
**Ophelia T. James, Tribal Secretary**

APPROVAL OF THE SAN CARLOS APACHE TRIBE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the SAN CARLOS APACHE TRIBE and declare this agreement to be in proper form and within the powers and authority granted to the Tribal Council under the laws of the ~~State of Arizona~~ *San Carlos Apache Tribe*. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 14<sup>th</sup> day of Jan, 2003

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Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR02-2050TRN (JPA 02-074), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED March 5, 2003.

TERRY GODDARD  
Attorney General

  
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JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section

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att.

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